PRE-APPEAL BRIEF REQUEST FOR REVIEW	Docket Number	
	Q81536	

	Application Number	Filed
Mail Stop AF	10/849,185	May 20, 2004
Commissioner for Patents	First Named Inventor	
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	Art Unit	Examiner
		El Hadi Malick
	2457	SALL

WASHINGTON OFFICE

23373

CUSTOMER NUMBER

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal

The review is requested for the reasons(s) stated on the attached sheet(s).
　　　Note: No more than five (5) pages may be provided.

☑ I am an attorney or agent of record.
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Signature

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November 9, 2009
Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Marcel Joseph Louis MAMPAEY, et al.

Appln. No.: 10/849,185

Confirmation No.: 7244

Filed: May 20, 2004

Docket No: Q81536

Group Art Unit: 2457

Examiner: El Hadi Malick SALL

For: METHOD FOR SELECTING AN APPLICATION SERVER, A RELATED CALL SESSION CONTROL NETWORK ELEMENT, A RELATED PRIMARY APPLICATION SERVER AND A RELATED CALLED USER TERMINAL

PRE-APPEAL BRIEF REQUEST FOR REVIEW

MAIL STOP AF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Pursuant to the Pre-Appeal Brief Conference Pilot Program, and further to the Examiner's Final Office Action dated July 8, 2009, Applicant files this Pre-Appeal Brief Request for Review. This Request is also accompanied by the filing of a Notice of Appeal and Petition for Extension of Time.

Applicant turns now to the rejections at issue:

Claims 1-10 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Ejzak (U.S. Patent No. 6,954,654) in view of Hsu et al. (U.S. Patent Application Publication No. 2004/0010473, hereafter, "Hsu") and Landherr et al. (U.S. Patent No. 6,880,156, hereafter "Landherr").

Applicant submits that there is no teaching or suggestion in Ejzak that the "primary application server (AS$_{Prim}$), upon analysis of said incoming IP multimedia call presenting said incoming IP multimedia call to said called party terminal (CDPT) together with a set of service applications for answering said incoming call, said set of service applications being determined in said analysis", as recited in claim 1 and analogously recited in claims 3, 5, and 9.

Column 13, lines 11-18 of Ejzak, which the Examiner cites as allegedly teaching this aspect of the claims, merely teaches that when a user equipment is registered, subscriber profile information is sent to the serving Call State Control Function (S-CSCF). The S-CSCF then provides all features and services for the registered user equipment. Ejzak does not teach or suggest that, after analyzing an incoming IP multimedia call, the S-CSCF presents the call to the called party together with a set of service applications for answering the incoming call, as claimed.

The Examiner appears to assert that the claimed "called party" allegedly reads on the MGCF 145 of Ejzak. Applicant submits that the Examiner's position is based on a clear misunderstanding of Ejzak. Ejzak clearly teaches that the MGCF, among its functions, is a signaling device which controls a set of media gateways and provides a call control interface and translations between IMS 141 and PSTN 161. The MGCF also accepts commands from the CSCF 143 to perform commands related to the control of a call (see column 5, lines 6-40), routes the calls from the CSCF to the PSTN 161.

Based on the above discussion, it is quite clear that the MGCF is <u>not</u>, and cannot be interpreted as, the <u>called party</u>. Ejzak distinguishes the called party as an "E.164 number destination" (column 8, lines 58-63), thus making a clear distinction between the MGCF and the called party.

Secondly, even if the MGCF "accepts commands from the CSCF to perform functions related to the control of a call", as asserted by the Examiner, this certainly does not equate to the "<u>primary application server (AS$_{Prim}$), upon analysis of said incoming IP multimedia call presenting said incoming IP multimedia call to said called party terminal (CDPT) together with a set of service applications for answering said incoming call, said set of service applications being determined in said analysis</u>", as claimed.

Further, Landherr does not teach or suggest that a "call session control Network element (CSCF) <u>upon intercepting said incoming IP multimedia call activating a dedicated primary application server</u>", as

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claimed. The Landherr system activates an additional server application on the server based on the load on the server. Landherr does not activate a dedicated primary application server upon intercepting an incoming IP multimedia call, as required by the claims. Applicant respectfully submits that Landherr has no relevance to the claimed invention.

Further, Applicant respectfully submits that the combination of the three references – Ejzak, Hsu, and Landherr simply <u>cannot</u> produce the claimed invention.

Independent claim 1 and analogous independent claims 3, 5, and 9 recite "said call session control Network element (CSCF) <u>upon intercepting said incoming IP multimedia call activating a dedicated primary application server</u>". In an exemplary embodiment of the present invention, an incoming call is intercepted and a dedicated primary application server is activated. Upon analysis of the incoming call the dedicated primary application server presents the incoming call to the called party together with a set of service applications for answering the call. Therefore, the called party chooses a service application to answer the incoming call.

The Examiner cites Landherr as allegedly teaching "activating a dedicated primary application server". However, Applicant respectfully submits that Landherr has absolutely no relevance to the claimed invention.

Landherr teaches a server which comprises one or more active server applications, a load detector and an inactive additional server application. The load detector is connected to the server applications, and an allocator causes the additional server to be activated when the load on the server exceeds a threshold (a load condition).

The Examiner has not provided any <u>supportable</u> objective reasoning why one of ordinary skill in the art would have been motivated to modify Ejzak in view of Landherr. The Examiner contends that it

would have been obvious to combine the references "in order to support the requesting server when the load exceed the threshold".[2] This stated rational is flawed for at least the following reasons.

Ejzak relates to IP multimedia communications. Landherr is not concerned with IP multimedia communications, but relates to the activation of a server application in response to a load condition. There are no load concerns noted in the Ejzak system. Further, Ejzak teaches multiple various servers (for example, servers 152, 153, and 201) which should be able to handle any supposed load, thus undermining the Examiner's basis for the combination.

Further, the references are directed to completely different objects such that there is no reason to combine or modify their teachings in view of each other.

The Examiner also acknowledges that Ejzak and Landherr fail to teach "call session control Network element (CSCF) receiving a selection of at least one service application from said set of service applications forwarded by said called party terminal", as claimed. The Examiner thus relies on Hsu to allegedly cure this conceded deficiency.

Applicant submits that Hsu also has no relevance to the claimed invention, since Hsu merely teaches a rule-based packet selection, storage, and access system for processing packets from network traffic.

The Examiner asserts:

Hsu discloses each packet is typically divided into a plurality of fields, whose function is defined by a predetermined protocol. The rules can compare, for example, one or more fields in an incoming packet with predetermined values and select that packet for logging

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[2] Page 4 of the office Action.

if the appropriate values are present. The selection of that packet is construed by the

Examiner as "a selection of at least one application from said set of service application".[1]

Applicant continues to find the Examiner's position extremely unclear, and further submits that

the Examiner's stated position is clearly erroneous.

The claimed service applications pertain to applications for answering an incoming call, and the

called party terminal is adapted to select an application from the set of application services to answer the

incoming call. The service applications may comprise recording the call or invoking a third party into the

call.

It remains unclear to Applicant how "selection of at least <u>one service application from said set of

service applications forwarded by said called party</u>", could read on the selection of a packet, as taught by

Hsu. Further, the diverse teachings of the references prevents them from being modified and combined in

order to produce the claimed invention.

Accordingly, applicant respectfully submits that the prior art rejections should be withdrawn.

Respectfully submitted,

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[1] Pages 8-9 of the Office Action.

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